

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

| | | |
|--------------------------|---|----------------------------|
| STATE OF DELAWARE |) | ID. No. 1403009360 |
| |) | In and for Kent County |
| v. |) | |
| |) | RK14-03-0312-01 |
| JAMIE L. BAKER, |) | Murder 2 nd (F) |
| |) | |
| Defendant. |) | |

COMMISSIONER'S REPORT AND RECOMMENDATION

**Upon Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

Jason C. Cohee, Esquire and Nicole S. Hartman Esquire, Deputies Attorney General,
Department of Justice, for the State of Delaware.

Jamie L. Baker, *Pro se*.

FREUD, Commissioner
November 19, 2018

The defendant, Jamie L. Baker ("Baker"), pled guilty on February 6, 2017 to one count of Murder in the Second Degree, as a lesser included offense of Murder in the First Degree, 11 *Del. C.* § 635. In exchange for her plea the State entered *nolle prosequis* on the remaining counts including one additional count of Murder in the First Degree, one count of Possession of a Deadly Weapon During the Commission of a Felony, and one count of Adulteration. Due to the nature of the charges Baker faced mandatory life in prison had she been convicted of the two lead charges of First Degree Murder. A presentence office investigation was ordered and both the State

and defense presented detailed evidence. At the sentencing on March 30, 2017 Baker took full responsibility for her action and asked for forgiveness.¹ The Court sentenced Baker to a total of fifty years incarceration suspended after forty years for probation, fifteen of which were minimum mandatory. On June 7, 2017, through counsel, Baker filed a motion to extend the filing of a Motion for Sentence Reduction which this Court denied. Baker did not appeal her conviction or sentence to the Delaware Supreme Court. She filed, *pro se*, the pending motion for postconviction pursuant to Superior Court Criminal Rule 61 on February 20, 2018 alleging, in part, ineffective assistance of counsel. She also requested the appointment of counsel. This court denied that request pursuant to Superior Court Criminal Rule 61(e)(2).

FACTS

The charges stemmed from Baker poisoning her husband, James Baker, by injecting antifreeze in to his bottles of liquid steroids which he used to aid his body building. Mr. Baker was found dead in his home on September 16, 2013. An investigation ensued and the bottles of steroids were seized by the police. The autopsy listed Mr. Baker's cause of death as Ethylene Glycol (a compound found in antifreeze) poisoning. Antifreeze was also discovered in the seized bottles of steroids. On March 19, 2014 in a post *Miranda* statement, Baker admitted that she had injected antifreeze into her husband's steroids in August 2013. Additionally at the sentencing a letter written by the Baker's young daughter was read into the record. In the letter the child who was eleven years-old at the time of her father's murder

¹ *State v. Baker*, Del. Super., ID No. 1403009360. (March 30, 2017), tr. at 30.

explained to the Court the events of the day before his death. She stated that her father was extremely ill and speaking incoherently but that her mother mocked him and refused her children's pleas to call 911.²

BAKER'S CONTENTIONS

In her motion, Baker raises the following grounds for relief:

Ground one: Ineffective counsel.
Was ledi (sic) to take a Murder 2nd plea by council (sic) when expert evidence and autopsys (sic), toxicology evidence showed clearly that I was innocent of poisoning James Dana Baker II. My husband did not die with toxic poisons in his system but died due to an enlarged heart twice the average size of a male due to 20 years of steroid use. Counselors (sic) Suzanne Macpherson-Johnson and Jaime Walker said the truth did not matter that that was the justice system. My defence council (sic) repeatedly missed council (sic) sessions, withheld mishandled evidence from the Forensic lab & did not receive all discovery from prosecution by the state at designated time. I am still missing discovery to date. My council (sic) refused to speak with me, correspond with me or review important PSI report. They also cancelled important key experts witnesses for my defense which included a domestic violence expert & steroid expert. I vow those are true facts of my case. My council (sic) told me to take a plea even though evidence proved me innocent of Murder in the 2nd.

² *State v. Baker*, Del. Super., ID No. 1403009360. (March 30, 2017), tr. 10 - 13.

State v. Baker

ID No. 1403009360

November 19, 2018

Ground two: Coerced Confession & misconduct by police officers.

On March 13, 2014 I was blocked into my garage by Sgt David Weaver and detective Scott Horseman. They did not read me my rights. They aggressively interrigrated (sic) me while I was under the influence of a controlled substance. They said they were there to help me. Sgt Weave (sic) asked me for a hug. Could he hug me. So did detective Horseman. They both hugged me in my garage. This is inappropriate touching & behavior for police officers. This incident is recorded by detective Horseman. Sgt. Weaver then put me in the front seat of his car and inappropriately touched me again on my arm. I was in hysterics. At troop 3 in Camden Wyoming, Delaware I asked For a lawyer. I did not receive one for five days. I was ignored. I asked for a phone call. They ignored me. Sgt. Weaver gave my keys to my home to my in laws and allowed them them (sic) to burglarize my home. I had asked her to transfer those things to my parents. I have a mental illness. Between the hugging and the treatment, it was coercion (sic) of a confession and all of my rights were violated.

Unnumbered ground : I suffer from mental illness and am being treated for Bipolar Disorder - Mania Depression, have PTSD & Anxiety disorder. I was taking the drug Welbutrin and psychiatrically (sic) evaluated as being under extreme emotional stress which contributed to my illness. My council (sic) used my mental illness as a tool (sic) of manipulation and misled me while bargaining a murder 2nd plea deal with Jason Cohee & Robert B. Young even though evidence was

produced (sic) that proves my innocence and was also within original autopsy and toxicology reports. I did not truly (sic) understand the plea or what I was signing under advisement of my counsel (sic).

DISCUSSION

Under Delaware law, this Court must first determine whether Baker has met the procedural requirements of Superior Court Criminal Rule 61(I) before it may consider the merits of her postconviction relief claim.³ This is Baker's first motion for postconviction relief, and it was filed within one year of her conviction becoming final. Therefore, the requirements of Rule 61(i)(1) - requiring filing within one year and (2) - requiring that all grounds for relief be presented in initial Rule 61 motion, are met. None of Baker's claims were raised at the plea, sentencing, or on direct appeal. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. To some extent each of Baker's claims are based on ineffective assistance of counsel; therefore, she has alleged cause for her failure to have raised them earlier.

At this point, Rule 61(i)(3) does not bar relief as to Baker's grounds for relief, provided she demonstrates that her counsel was ineffective and that she was prejudiced by counsel's actions. To prevail on her claim of ineffective assistance of counsel, Baker must meet the two-prong test of *Strickland v. Washington*.⁴ In the

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

⁴ 466 U.S. 668 (1984).

context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to her in that there is a reasonable probability that, but for counsel's error, she would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been her acquittal.⁵ The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.⁶ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.⁷ When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.⁸ This standard is highly demanding.⁹ *Strickland* mandates that, when viewing counsel's representation, this Court must

⁵ *Id.* at 687.

⁶ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

⁷ See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).

⁸ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

⁹ *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

endeavor to “eliminate the distorting effects of hindsight.”¹⁰

Following a complete review of the record in this matter, it is abundantly clear that Baker has failed to allege any facts sufficient to substantiate her claim that her attorney was ineffective. I find Trial Counsels’ affidavit, in conjunction with the record, more credible that Baker’s self-serving claims that her counsels’ representation was ineffective. Baker’s counsel clearly deny the allegations.

As noted, Baker was facing the possibility of mandatory life in prison had she been convicted, and the sentence and plea were reasonable under all the circumstances, especially in light of the overwhelming evidence against her. Prior to the entry of the plea, Baker and her attorney discussed the case. The plea bargain was clearly advantageous to Baker. Counsels’ representation was certainly well within the range required by *Strickland*. Additionally, when Baker entered her guilty plea, she stated she was satisfied with defense counsel’s performance. She is bound by her statement unless she presents clear and convincing evidence to the contrary.¹¹ Consequently, Baker has failed to establish that her counsel’s representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel’s representation of Baker was somehow deficient, Baker must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make

¹⁰ *Strickland*, 466 U.S. at 689.

¹¹ *Mapp v. State*, 1994 WL 91264, at *2 (Del.Supr.)(citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

State v. Baker
ID No. 1403009360
November 19, 2018

concrete allegations of actual prejudice and substantiate them or risk dismissal.¹² In an attempt to show prejudice, Baker simply asserts that her counsel was ineffective and mistakenly claims her actions did not cause her husband's death. Her statements are insufficient to establish prejudice, particularly in light of the evidence against her. Therefore, I find Baker's grounds for relief are meritless.

I will briefly address Baker's claims. Her first ground alleges that Trial Counsel provided professionally deficient representation by not reviewing evidence with her, saying the truth does not matter and missing meetings. Baker further suggested that her husband died from an enlarged heart rather than toxic poisons. In responding to Baker's ineffectiveness claim, Trial Counsel specifically wrote: "The Autopsy Report of Dr. Edward T. McDonough and the Death Certificate for James Baker II both list Ethylene Glycol Poisoning as the cause of Mr. Baker's death. These documents were provided to the Defendant..." Trial Counsel listed the members of the defense team including three separate experts, Nicholas Lappas, Ph.D. (Forensic Toxicologist), David R. Fowler (Forensic Pathologist) and Susan E. Rushing M.D., J.D. (Psychiatrist and Attorney). Trial Counsel also listed more than fifty-five in-person visits and seven video visits members of the defense team had with Baker.

Baker has failed to establish either prong of *Strickland*. Trial Counsels' Affidavit shows the defense team met with her on many occasions and forwarded

¹² *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

discovery to her. The defense team acted professionally reasonable. Baker has failed to show that but for Trial Counsels' alleged and unsubstantiated errors, she would have demanded a trial.

In Baker's Ground two she challenges the sufficiency of the evidence in the case against her. The substance of Baker's complaint was included in a Motion to Suppress filed by her Trial Counsel in December 2016. Baker pled guilty to Murder in the Second Degree in February 2017. Her valid guilty plea waives any right to challenge the strength of the State's evidence and events preceding entry of the plea.¹³ Baker's knowing, intelligent and voluntary guilty plea therefore withdrew these challenges to the State's evidence.

In Baker's Unnumbered ground for relief, she loosely suggests she was coerced into pleading guilty due to her mental illness. Trial Counsel denied any manipulation. Trial Counsel also denied Baker giving any indication that she did not understand the plea. Baker does not attempt to substantiate her claims - rather she only makes conclusory allegations. Baker has the burden of persuasion.¹⁴ Unsubstantiated

¹³ *Hunter v. State*, 1016 WL 4191920, at *2 (citing *Brown v. State*, 108 A.3d 1201 (Del. 2015)).

¹⁴ See *Stow v. State*, 2009 WL 724133, at *2 (Del.) ("This Court has held that [c]onclusory allegations of innocence are not sufficient to require withdraw of a guilty plea." That principle should also apply to conclusory allegations that defendant was coerced into a guilty plea...A review of the plea colloquy does not disclose any basis to infer that Stow was coerced.")(internal citations omitted).

conclusory allegations do not support a claim of ineffective assistance of counsel.¹⁵

To the extent that Baker alleges her plea was involuntary, the record contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.¹⁶ At the guilty plea hearing, the Court asked Baker whether she understood the nature of the charges, the consequences of her pleading guilty, and whether she was voluntarily pleading guilty. The Court asked Baker if she understood she would waive her constitutional rights if she pled guilty; if she understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form (“Guilty Plea Form”) including the right to suppress evidence; and whether she gave truthful answers to all the questions on the form. The Court asked Baker if she had discussed the guilty plea and its consequences fully with her attorney. The Court asked Baker if she was entering into the plea as she was guilty of the charges. The Court also asked Baker if she was satisfied with her counsels’ representation. Baker answered each of these questions affirmatively.¹⁷ Additionally at her sentencing Baker acknowledged her guilt and requested forgiveness from her victims’s family.¹⁸ I find counsels’ representations far more credible than Baker’s self-serving, vague allegations.

¹⁵ *Jamison v. State*, 2003 WL 21295908, at *2 (Del.).

¹⁶ *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

¹⁷ *State v. Baker*, Del. Super., ID No. 1403009360, (Feb. 6, 2017), Tr. at Plea 3 - 9.

¹⁸ *Baker*, Del. Super., ID No. 1403009360, (March 30, 2017), Tr. of Sentencing at 30.

State v. Baker
ID No. 1403009360
November 19, 2018

Furthermore, prior to entering her guilty plea, Baker signed a Guilty Plea Form and Plea Agreement in her own handwriting. Baker's signatures on the forms indicate that she understood the constitutional rights she was relinquishing by pleading guilty and that she freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Baker is bound by the statements she made on the signed Guilty Plea Form, unless she proves otherwise by clear and convincing evidence.¹⁹ I confidently find that Baker entered her guilty plea knowingly and voluntarily and that Baker's grounds for relief are completely meritless.

CONCLUSION

I find that Baker's counsel represented her in a competent and effective manner and that Baker has failed to demonstrate any prejudice stemming from the representation. I also find that Baker's guilty plea was entered knowingly and voluntarily. I recommend that the Court **deny** Baker's motion for postconviction relief as procedurally barred and completely meritless.

/s/ Andrea M. Freud
Commissioner

AMF/dsc
oc: Prothonotary

¹⁹ *Sommerville*, 703 A.2d at 632.